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Of Attorneys for Defendants City of Beaverton and Jason Buel

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

HAO XENG VANG

Plaintiff,

No. CV-09-928-BR

v.

**CITY OF BEAVERTON and JASON
BUELT**

**DEFENDANTS CITY OF BEAVERTON
AND JASON BUELT'S ANSWER AND
AFFIRMATIVE DEFENSES**

Defendants.

DEMAND FOR JURY TRIAL

Defendants City of Beaverton and Jason Buel (hereinafter "Defendants") deny each and every allegation of plaintiff's Complaint except as admitted in this Answer.

1.

Defendants admit that jurisdiction and venue are proper and that, so long as federal claims remain, this court has supplemental jurisdiction.

2.

Defendants admit that the City of Beaverton is a municipal corporation and a political subdivision of the State of Oregon.

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3.

Defendants admit that Defendant Jason Buelt was acting within the scope of his employment or duties as a police officer for the City of Beaverton at the time of the incident described in the complaint.

4.

Defendants admit that Defendant Jason Buelt was acting under color of law for the City of Beaverton at the time of the incident described in the complaint.

5.

Defendants admit plaintiff was arrested on or about August 17, 2008, that he was briefly placed in jail, that his cell phone was seized as evidence, that a file was deleted from the phone and that he was not prosecuted.

FOR A FURTHER SEPARATE ANSWER AND BY WAY OF FIRST AFFIRMATIVE DEFENSE, defendants allege as follows:

6.

Some or all of the claims against the defendants, either individually or jointly, fail to state a claim for relief.

FOR A FURTHER SEPARATE ANSWER AND BY WAY OF SECOND AFFIRMATIVE DEFENSE, defendants allege as follows:

7.

Plaintiff's claims are subject to the conditions, limitations, and immunities of the Tort Claims Act, ORS 30.260, *et seq.*

FOR A FURTHER SEPARATE ANSWER AND BY WAY OF THIRD AFFIRMATIVE DEFENSE, defendants allege as follows:

8.

Any defendant sued in his individual capacity, including Jason Buelt, is entitled to qualified immunity.

FOR A FURTHER SEPARATE ANSWER AND BY WAY OF FOURTH AFFIRMATIVE DEFENSE, defendants allege as follows:

9.

There was reasonable suspicion to detain plaintiff.

FOR A FURTHER SEPARATE ANSWER AND BY WAY OF FIFTH AFFIRMATIVE DEFENSE, defendants allege as follows:

10.

There was probable cause to arrest plaintiff.

FOR A FURTHER SEPARATE ANSWER AND BY WAY OF SIXTH AFFIRMATIVE DEFENSE, defendants allege as follows:

11.

The actions of Defendant Jason Buelt were privileged, as they were necessary to carry out his duties as a law enforcement officer.

FOR A FURTHER SEPARATE ANSWER AND BY WAY OF SEVENTH AFFIRMATIVE DEFENSE, defendants allege as follows:

12.

The actions of Defendant Jason Buelt were justified, as they were necessary to carry out his duties as a law enforcement officer.

FOR A FURTHER SEPARATE ANSWER AND BY WAY OF EIGHTH AFFIRMATIVE DEFENSE, defendants allege as follows:

13.

There was probable cause to search the cell phone.

FOR A FURTHER SEPARATE ANSWER AND BY WAY OF NINTH
AFFIRMATIVE DEFENSE, defendants allege as follows:

14.

Any search of the cell phone was lawful and did not violate any constitutional rights of the plaintiff.

WHEREFORE, having fully answered plaintiff's Complaint, defendants pray that the same be dismissed, they be awarded their costs, disbursements and reasonable attorney fees incurred herein, and such other relief as the Court deems just and equitable.

Defendants respectfully request jury trial.

Dated this 31st day of August, 2009.

HOFFMAN HART & WAGNER, LLP

By: /s/ Steven A. Kraemer
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